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Supreme Court, U. S.
FILED
JUL 15 1972
JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1429

PARTICULAR CLEANERS, INC. and FRANCES ENTWISTLE,

Petitioners,

vs.

COMMONWEALTH EDISON COMPANY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit.

RESPONDENT'S REPLY TO SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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July 14, 1972

MIDWEST LAW PRINTING CO., CHICAGO 60601. FINANCIAL 6-3988

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In their supplemental brief petitioners assert that the Seventh Circuit's decision in this case conflicts with *Ihrke* v. *Northern States Power Co., Util. L. Rep.* ¶21,740 (8th Cir. May 3, 1972). Respondent Commonwealth Edison Company submits, however, that this case is significantly different from *Ihrke* and is in any event a poor case for review by this Court.

In *Ihrke,* the Court of Appeals for the Eighth Circuit held that a defendant utility company acted under color

of state law in terminating plaintiffs' gas and electric service. But unlike the instant case, *Ihrke* involved a utility whose termination procedures were subject to regulation by a municipality which shared in a percentage of the utility's collections and whose property the utility used. Indeed, the Eighth Circuit pointed to these characteristics as distinguishing the case from *Kadlec* v. *Illinois Bell Telephone Co.*, 407 F. 2d 624 (7th Cir.), *cert. den.* 396 U.S. 846 (1969), on which the Seventh Circuit relied in its decision here below:

> "However, this case [*Ihrke*] does not present the same situation [as *Kadlec*]. . . . [S]ince the city received 5% of Northern's gross earnings, the city benefitted from the payment of bills resulting from Northern's threatening to terminate services." *Util. L. Rep.* ¶21,740 at 48,306.

Given these special factors in *Ihrke* which were not present here, there would appear to be no conflict of circuits.

In any event, here the failure of the complaint to have alleged any impermissible or invidious classification showing any equal protection claim provided an additional ground for dismissal. This makes the case inappropriate for review by this Court regardless of any difference between circuits.

Respectfully submitted,

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